

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16618 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SAVITABEN D/O PRATAPJI NENUJI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16618 of 2003
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
Ms P B Sheth, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 22/04/2004

ORAL JUDGEMENT

The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19.11.03

passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that six prohibition offences were registered against him before Naranpura Police Station between 1.2.2003 and 13.1.2003 for offences punishable u/s.66, 65 and 81 of the Bombay Prohibition Act, 1949. It was also alleged that the petitioner was found in possession of country made liquor. On the strength of the registered offences the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that few offences were registered, it could not be said that there was a threat to public order. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit filed by the detaining authority, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. It is not much in dispute that the petitioner was detained in exercise of the powers u/s.3(2) of the said Act on the ground that the petitioner was a "bootlegger" and his activities amounted to a threat to public order. The learned advocate for the petitioner has contended that six offences under the Bombay Prohibition Act, 1949, were registered against the petitioner. That the said offences registered against the petitioner, list of which can be gathered at page 12 to the petition, could not lead to an inference that the petitioner was a "bootlegger" and that his alleged bootlegging activities raised a threat to public order.

7. It is well settled that simply because a few

prohibition offences have been registered against the petitioner, this activity of the petitioner cannot be said to be leading to a threat to public order or public health. In absence of any material leading to a threat to public order or public health, the order of detention cannot be passed and if passed, cannot be sustained . In that view of the matter, when the order of detention is not found to be illegal, it is required to be quashed and set aside.

8. For the foregoing reason, this petition is allowed. The impugned order of detention dated 19.11.03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

[D P Buch, J.]

msp